

Amendments to Senate Bill No. 31
1st Reading CopyRequested by Senator ~~John Esp~~ **JENT**

For the Senate Judiciary Committee

Prepared by Valencia Lane
February 9, 2007 (3:55pm)*Adopted*
by Subcomm.
2/15

1. Page 3, line 17 through line 18.
Following: "relative," on line 17
Strike: remainder of line 17 through "resides," on line 18
2. Page 3, line 18.
Following: the first "and"
Strike: "to the local and state offices of"
Insert: "may be provided to"
3. Page 3, line 29.
Following: "department"
Strike: "shall"
Insert: "may"
4. Page 4, line 12.
Following: line 11
Insert: "(c) During or after the 14-day period established under subsection (5)(a), the caretaker relative may commence a parenting plan proceeding under 40-4-211 or petition the court to be appointed the guardian of the minor under 72-5-225."
5. Page 4, line 13 through line 15.
Following: "known" on line 13
Strike: remainder of line 13 through "chapter" on line 15
6. Page 4, line 17 through line 18.
Following: "relative" on line 17
Strike: remainder of line 17 through "considered by the court" on line 18
7. Page 4, line 20.
Following: "based"
Strike: "only"
8. Page 4, line 20 through line 21.
Following: "nonabandonment" on line 20
Strike: remainder of line 20 through "relative" on line 21
9. Page 5, line 2.

(OVER)

Following: "Title" in two places
Strike: "41, chapter 3"
Insert: "40, chapter 9"

- END -

(iii) the efforts made by the relative to care for the child, including:

(A) facts explaining the nature of the home provided by the relative for the child;

(B) the schooling of the child while in the relative's custody; and

(C) the socialization of the child with other children and adults, both inside and outside the family of the caretaker relative; and

(iv) whether any contact was made by the child's parent with the relative, the child, or both, during the absence of the parent and if so, the date, time, and circumstances of that contact, including any conversation between the relative and the parent concerning when the parent would return and resume custody of the child;

(c) a statement by the caretaker relative as to why the relative wishes to maintain custody of the child;

(d) a warning, in at least 10-point type, to the caretaker relative in the following language: "WARNING: DO NOT SIGN THE FOREGOING AFFIDAVIT IF ANY OF THE ABOVE STATEMENTS ARE INCORRECT, OR YOU WILL BE COMMITTING AN OFFENSE PUNISHABLE BY FINE, IMPRISONMENT, OR BOTH."; and

(e) a notarized signature of the caretaker relative following a written declaration that the affidavit is made under oath and under penalty of the laws of Montana governing the giving of false sworn testimony and that the information stated by the caretaker relative in the affidavit is true and correct.

(3) A copy of the affidavit filed with the district court must be provided by the caretaker relative to the child's parent, if the address or location of the parent is known to the relative, ~~to the county attorney of the county in which the caretaker relative resides, and to the local and state offices of~~ ^{may be provided to} the department of public health and human services. A caretaker relative may maintain temporary custody of the child for 5 days following the return of the parent and the demand by the parent for custody of the child pending completion of the affidavit and the order of the district court. During that 5-day period, the caretaker relative may not be deprived of the custody of the child by a peace officer or by the order of a court unless a court finds, upon petition by the child's parent and after a hearing and upon notice to the caretaker relative as the court shall require, that:

(a) the child has not been in the custody of the caretaker relative for at least 6 months;

(b) the caretaker relative has committed child abuse or neglect with regard to the child in the custody of the relative; or

(c) the action by the caretaker relative to make and file the affidavit with the district court in accordance with this section was not made in good faith.

(4) Upon receipt of the caretaker relative's affidavit pursuant to subsection (3), the department ~~shall~~ ^{MAY} proceed pursuant to 41-3-202 as if a report of abandonment of the child had been received.

1 (5) (a) Within 48 hours of the filing of the affidavit, the district court shall review the affidavit and
2 determine ex parte whether the affidavit contains prima facie evidence that the child was abandoned by the child's
3 parent. If the court determines that there is prima facie evidence that the child was abandoned by the child's
4 parent, the court shall within 3 days of its determination of prima facie evidence enter appropriate findings of fact
5 concerning the abandonment and enter an ex parte order approving and ordering continued custody and control
6 of the child by the caretaker relative. An order of the district court pursuant to this subsection approving and
7 ordering continued custody by the caretaker relative is effective for 14 days following entry of the order.

8 (b) If the court determines that the affidavit does not provide prima facie evidence of abandonment by
9 the parent, the court shall within 3 days of its determination make appropriate findings of fact and order the child
10 returned to the parent. Upon receipt of the written findings and order of the court, the caretaker relative shall
11 surrender the custody and control of the child to the child's parent.

12 (c) (6) Upon entry of an order by the district court pursuant to subsection (5)(a), the clerk shall send a copy
13 of the order to the child's parent, if the address of the parent is known, ~~to the county attorney, and to the local and~~
14 ~~state offices of the department of public health and human services. The department shall treat the order as a~~
15 ~~substantiated allegation of abandonment for the purposes of this chapter.~~

16 (7) The child's parent may, after receipt of the court's findings and order ordering continued custody of
17 a child by a caretaker relative ~~and only if the parent provides evidence of nonabandonment that was not~~
18 ~~considered by the court~~, apply to the court, upon notice to the caretaker relative as the court shall provide, for a
19 reconsideration of the court's order approving continued custody of the child by the relative. The court shall
20 reconsider its order and may reverse its order based ~~only~~ upon presentation of evidence of nonabandonment ~~that~~
21 ~~was not considered by the court in making its order approving the continued custody of the child by the relative.~~

22 Pending a reconsideration pursuant to this subsection, custody of the child must remain with the relative unless
23 the order of the district court approving that custody expires or a court has ordered a change of custody pursuant
24 to subsection (3).

25 (8) [(a)] A caretaker relative refusing to surrender custody of a child while acting in good faith and in
26 accordance with this section is immune from civil or criminal action brought because of that refusal.

27 [(b) A peace officer acting in good faith and taking or refusing to take custody of a child from a relative
28 in accordance with this section and the entity employing the officer is immune from civil or criminal action or
29 professional discipline brought because of the taking of or refusal to take custody of the child.]

30 (c) During or after the 14-day period established under
subsection (5) (a), the caretaker relative may commence a
parenting plan proceeding under 40-4-211 or petition the
court to be appointed the guardian of the minor under 72-5-
225.

NEW SECTION. Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title ~~41~~, chapter ~~3~~, and the provisions of Title ~~41~~, chapter ~~3~~, apply to [sections 1 and 2].

NEW SECTION. Section 4. Two-thirds vote required -- contingent voidness. Because [section 2(8)(b)] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for its passage. If [this act] is not approved by at least two-thirds of the members of each house of the legislature, then the bracketed language in [section 2(8)] is void.

NEW SECTION. Section 5. Applicability. [This act] applies to the voluntary surrender of a child by the child's parent to a caretaker relative, all as defined in [section 1], occurring on or after October 1, 2007.

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